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SUBJECT: Vietnam Tackling Abusive Export Labor Firms

Ref: A. Hanoi 801 B. 05 Hanoi 841

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1. (SBU) Summary: Confronted with problems related to a burgeoning export labor industry, the Government of Vietnam (GVN) is taking action to regulate the industry and protect workers from potential abuse. In an effort to mitigate unemployment and develop its pool of skilled workers, the Government of Vietnam aims to send 80,000-90,000 additional Vietnamese citizens overseas each year from 2006 to 2010. Most of 400,000 workers now overseas are employed in Taiwan, Korea and Malaysia, but the Vietnamese Government is increasingly targeting wealthier countries such as Saudi Arabia, Japan, Canada and the United States. Alarmed at reports of export labor firms, employers abroad and domestic criminals exploiting and/or defrauding workers, the GVN has stepped up efforts to protect its citizens. Central to this effort will be to replace past export labor regulations with an actual labor export law to regulate the industry, facilitate export labor and provide better protection to workers. A draft export labor law is due to be debated in the National Assembly's May session, with passage expected in November 2006. Post believes the current draft provisions for worker protection are an improvement over existing laws but still inadequate. Post is encouraged that GVN and National Assembly officials are working to improve it in coordination with international community experts. Other GVN measures include increasing prosecutions related to illegal export labor activities, investigating export labor firms, and holding off on new license approvals for firms seeking to send workers to the United States. End Summary.

#### GVN Promoting Export Labor

2. (SBU) The GVN is promoting export labor in an effort to mitigate unemployment, reduce social services costs, earn foreign exchange, and develop the country's pool of skilled workers. According to the Ministry of Labor, Invalids and Social Affairs (MOLISA), approximately 400,000 Vietnamese citizens were working abroad as of late 2005. The GVN plans to boost this number to as many as 500,000 by 2010 by increasing to 80,000-90,000 the number of additional workers sent abroad each year between 2006 and 2010. In 2005, Vietnam sent 71,000 workers abroad. (Note: the actual numbers of Vietnamese export laborers are far smaller than those being thrown around by labor export

boosters; the "100,000 per year" to Saudi Arabia and the "200,000 per year" to Malaysia significantly overstate likely short-term or even medium-term prospects. End note.) The largest markets for Vietnamese workers abroad are Taiwan, Malaysia, Korea and Japan, with smaller numbers in Eastern Europe and some Gulf States. The GVN is also actively exploring higher wage countries as markets for Vietnamese labor exports, particularly Japan, Saudi Arabia, Canada, and the United States.

¶3. (SBU) In January 2006, the Minister of Labor, Invalids and Social Affairs visited Saudi Arabia to explore the possibility of sending Vietnamese workers there. Though the Vietnamese press triumphantly announced the possibility of "100,000 jobs per year for Vietnamese workers in Saudi Arabia," experts at MOLISA's Department of Overseas Labor told Emboffs and visiting EAP and G/TIP officers that the Saudi program is in its infancy, that the initial numbers will be very low, and that Vietnamese labor export will be limited to skilled, male construction workers to avoid problems that have plagued foreign female domestic workers in Saudi Arabia.

They Want to Be in America  
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¶4. (SBU) Likewise, Vietnamese officials have been actively exploring U.S. markets. Officers from MOLISA, the Ministry of Foreign Affairs (MFA) and the Office of the Government (OOG) all confirmed to Emboffs that Vietnam wants to establish a labor export relationship with the United States. The primary obstacle to Vietnamese export labor, these experts say, is the fact that U.S. agricultural worker visas are only valid for one year, which limits the length of an export

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laborer's contract to one year. Because the fees a labor export company can charge a worker are capped and are dependent on the length of the contract the worker is able to obtain (with the maximum being one month salary per contract year), a one-year contract is not cost effective for the labor export companies, and consequently many concentrate on other labor-receiving countries where the profit per worker contract will be much larger. Nguyen Xuan Vui, the director of VinaSerCo, the second-largest labor export company in Vietnam, told Poloff in March 2006: "We would be happy to do business with the United States, but we cannot make a profit with only one-year contracts. Please change your laws for export workers." VinaSerCo sends workers to Malaysia, Taiwan and Dubai; the Dubai contracts can run as long as five years, and are very lucrative for the labor export companies and the workers, who earn many times what they could earn in Vietnam.

¶5. (SBU) No firms currently have licenses to send workers to the United States, though several firms have tried to do so. All Qworkers scheduled to be sent to the U.S. in 2006 thus far are to travel in connection with a still-unapproved contract between local labor export firms and the U.S. Global Horizons Inc. In a meeting on March 28, MOLISA officials told Econoff, Conoff and Econ Assistant that labor firms should not have proceeded to recruit workers for the United States, because the contract between local labor firms and GHI had not yet been approved. All 25 visa applications in Hanoi were denied and 37 of 48 visas were denied in HCMC because of falsified applications or the exorbitant fees charged by eight firms seeking to send workers abroad. With firms charging between USD 5,000 and USD 6,500 (based, we understand, on what the export companies believed was a three-year labor

export worker contract incorporating overtime assumptions), workers could not expect to see a profit in one year of working abroad, and thus could be expected to seek illegal employment in the United States.

#### Mechanics of the Industry

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16. (SBU) Workers participating in the export labor market do so via contracts signed with licensed Vietnamese labor exporting firms such as VinaSerCo, all of which are independent, but state-owned, enterprises. Export labor companies are licensed and managed by MOLISA's Bureau of Overseas Labor Management. This office also coordinates matters related to export labor with other ministries (especially the Ministry of Foreign Affairs and Ministry of Public Security), and municipal/provincial People's Committees. Interagency cooperation in Vietnam is often problematic.

17. (SBU) According to MOLISA, there are currently 145 export labor companies (including VinaSerCo) that facilitate sending workers abroad. Only licensed labor export companies can engage in labor export without violating Vietnamese immigration laws. Vietnamese export labor firms must submit their contracts with overseas firms (which place workers with employers) for approval before sending workers overseas. Labor export companies recruit and train workers and are responsible for visas, health checks, travel arrangements and other aspects of laborers' contracts. The permissible fees for these services are set by law.

18. (SBU) The current legal instrument governing the management of Vietnamese overseas laborers, Decree No. 141/2005/ND-CP, was issued in November, 2005 in an effort to regulate the growing industry and to supplement Decree No. 81/2003/ND-CP from July 2003 which covers export labor more broadly. Decree No. 141 outlines the rights and responsibilities of workers, labor export firms and government agencies in all export labor activities. The decree was written with encouragement of export labor in mind, stating: "The State encourages agencies, organizations and Vietnamese people at home and abroad to participate in expanding markets, seeking partners and contacts to create conditions for laborers to work abroad in accordance with international law, Vietnamese laws and laws of host countries." The decree sets out sanctions for

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violations by labor export companies, which can include fines or license suspensions or revocations. According to the Deputy Director of MOLISA's Department of Overseas Labor, MOLISA is responsible for carrying out periodic inspections to ensure compliance with the law by labor export companies. For violations that are "serious" or criminal in nature, violators can be charged under criminal law, MOLISA said. Another motivator for the decree was the high rate of broken contracts for Vietnamese workers in certain high-wage countries, particularly Taiwan and Korea. Forty percent of Vietnamese export laborers in South Korea and about nine percent of workers in Taiwan leave their contracted workplaces or disappear into the illegal labor market after the expiration of their contracts, MOLISA said. Such violations have prompted periodic suspensions of labor import from Vietnam by both Korea and Taiwan. The decree forbids Vietnamese workers from breaking labor contracts under penalty of "repatriation."

#### Alleged Worker Abuses Causing Concern

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¶9. (SBU) Amid stepped up efforts to promote export labor, reports have also increased of abuses by export labor firms, criminals in Vietnam defrauding would-be overseas workers, and employers abroad. Alleged abuses range from bonded labor, to extortionate fees charged by labor contracting firms, to sexual trafficking conducted using labor contracts as camouflage.

¶10. (SBU) Researchers from Taiwan's National Chi Nan University and Canada's University of Western Ontario recently conducted a case study of Vietnamese workers sent to Taiwan and provided a readout to Econoff and other NGO and International Organization staff in Hanoi. The sample size of the survey was small (about 50 workers) but the researchers believe that data was reliable because of the depth of interviews. They found that fifty percent of the workers interviewed lost money during the period of their contracts abroad (which averaged 1.3 years). They also found that Vietnamese laborers paid on average \$6,343 during their first year of work abroad, while earning a wage of \$5,760. Such figures are consistent with workers seeking H2A visas in Hanoi and HCMC (ref A).

¶11. (SBU) In addition, the researchers documented cases in which Vietnamese workers had been sexually abused, coerced into signing exploitative contracts, or, once in Taiwan, held in situations of bonded labor. They also reported cases of Vietnamese firms running up fees for workers by demanding extra payments for training, brokerage service fees for receiving-country labor firms, medical care, and airfare. Some of these fees are legal, normal and customary, but it is unclear to what degree the relatively unsophisticated workers are aware of them in advance. By the time these fees become unbearable, workers have already committed substantial sums and are unwilling to back out, said the researchers. The Vietnamese press runs frequent public service announcements, cautionary tales and feature articles on overseas workers who find their experiences difficult and not profitable, all in an effort to raise awareness among potential laborers and reduce scams. But the lure of high salaries overseas continues to draw thousands of unskilled laborers who are extraordinarily vulnerable to scams and cons.

¶12. (SBU) According to the GVN and Vietnamese media sources, the various predators who take advantage of Vietnamese hopefuls are depressingly diverse. Some criminals establish fake labor export companies and collect advance fees for jobs that do not exist before disappearing with the funds. Some semi-legal operators set up expensive "training schools" that claim to be able to "place" graduates with labor export companies for good contracts overseas. Others claim to be official intermediaries between labor export companies and workers, "brokering the brokers" for a fee. When the differential between the overseas wage and the available local wage is so high, the opportunities to defraud unsophisticated workers are ample. Importantly, according to international organization and NGO contacts, the labor export companies themselves are rarely the culprits in these scams. Their

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businesses are lucrative enough from the large-scale collection of legal and legitimate fees that they do not need to engage in these petty scams to make money. "Many workers have accumulated substantial debt before they arrive at a labor export company," one Taiwan economic official told Poloff.

¶13. (SBU) Another key area of difficulty is the lack of support to help Vietnamese workers abroad. Vietnamese embassies have MOLISA labor officers assigned to assist workers in trouble and the GVN has also established a

"Fund for Labor Export Support" to assist workers in need. Export labor firms must contribute one percent of their service fees to the fund. Vietnamese embassies in export labor destinations also have labor sections to support workers. South Korea has four labor workers, Taiwan has four, Malaysia has four, and Japan has two.

¶14. (SBU) unfortunately, knowledge of this support among workers is reportedly low. Decree 141 attempts to address this issue by directing Ministries, overseas missions and other state agencies to support overseas laborers in a range of ways. Article 18, for example, directs the Ministry of Foreign Affairs to "provide consular and legal protection for Vietnamese citizens working abroad." Article 18 directs the Ministry of Public Security to "coordinate with overseas Vietnamese representative missions ... to investigate and handle in time cases showing criminal signs..." Article 20 directs Provincial People's Committees to conduct education activities on guidelines and policies for overseas workers. Article 22 states that "overseas Vietnamese representative missions" have the responsibility to:

- Guide enterprises [labor export companies] to gain access to markets and sign labor cooperation contracts according to the provisions of the laws of Vietnam and the host countries;
- Assist specialized agencies in Vietnam in appraising the conditions and feasibility of labor receipt contracts and the legal person status of foreign partners;
- Guide and supervise activities of Vietnamese enterprises' representatives in foreign countries concerning their responsibilities to manage laborers and handle matters related to laborers;
- Protect the legitimate rights and interests of laborers working abroad; and handle violations committed by Vietnamese laborers working abroad according to the provisions of the Decree;
- Report on and propose competent Vietnamese agencies for settlement cases showing signs of serious violation of the provisions of Vietnamese law;
- Coordinate with functional agencies of Vietnam and the host countries and enterprises in sending violating laborers home.

As always in Vietnam, implementation is the issue; small Embassies and large numbers of Vietnamese laborers abroad mean that this well-intentioned effort may not be able to overcome its resource limitations.

"These are our people" -- Actions against Abusers  
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¶15. (SBU) In light of potential and real abuses, the GVN has stepped up action against abusive export labor firms and is seeking to increase worker protections. In a meeting at MOLISA on March 15, Deputy Director for International Cooperation Nguyen Manh Cuong stated: "We understand the United States is concerned about the rights of Vietnamese workers. You must know this: that the concerns that you have are ten times stronger for us. These are our people." Cuong's statements were echoed elsewhere in MOLISA, and, importantly, by the Vice-Chairman of the National Assembly's Social Affairs Committee, Luong Phan Cu, in a March meeting with visiting EAP and G/TIP staffers.

¶16. (SBU) Central to this effort will be to upgrade



Decrees 141 and 81 and create an actual labor export law to regulate the industry, facilitate export labor and provide better protection to workers. The initial draft of the law has been submitted for initial review at the May 2006 session of the National Assembly, with passage of the final law expected in the fall session, probably in November. Post believes the current draft's provisions for worker protection are better than in Decrees 81 and 141, though still inadequate. Specifically, the draft law puts greater responsibility on labor export firms to bear the costs of providing medical care and returning workers home if workers are injured or fall ill. Firms must also return fees on a pro-rata basis if workers must return to Vietnam for reasons "not due to their faults [sic]." The draft also clarifies the range of fees that workers are obligated to pay.

¶17. (SBU) Despite these improvements, the GVN and the National Assembly agree the law needs better protections for trafficking victims, and are in the process of revising the draft in coordination with the international community. MOLISA officials in their meeting with Econoff, Conoff and econ assistant on March 28 expressed interest in receiving input from other countries as well as international organizations such as the ILO and IOM on the law to improve it. Vice-Chairman Cu told Poloff he is "unsatisfied" with the current draft and has returned it to the drafting committee for re-evaluation. "The National Assembly has instructed the Government agencies to work on the draft law for labor export so that it will ensure that workers are not exploited," Cu said. "Vietnam is interested in, and welcomes, the recommendations and suggestions of the international community on how to protect workers."

¶18. (SBU) Pham Chi Lan, a senior advisor on the Prime Minister's Research Commission, who is close to several of the cabinet officials on the drafting committee for the labor export law, told Poloff that the initial draft of the labor export law was created to focus on promotion of labor export and reduction of contract-breaking among Vietnamese workers overseas that could cause Vietnamese labor to be unattractive or uncompetitive. However, the various approving agencies, including the OOG, the National Assembly and the Party, have all demanded that the protections for Vietnamese workers be strengthened before the law is passed. Officials from the International Organization for Migration and the International Labor Organization will meet with the Chairwoman of the Social Affairs Committee of the National Assembly during the week of April 10-15 to explain needed changes in the law. ILO and IOM are optimistic that their input will be considered and incorporated.

#### Current Enforcement Measures

¶19. (SBU) In addition to drafting a labor export law, the GVN has stepped up other actions against abusive labor firms. The following are concrete actions currently under way or taken recently:

-- While the GVN does not keep or supply statistics of export labor violations, a survey of news reports indicates the GVN has prosecuted more abusive labor firms in the first quarter of 2006 than it did in all of 2005. The GVN has is currently criminally prosecuting at least ten individuals for labor export related abuses in 2006. Post found two such cases in ¶2005. Most alleged crimes relate to theft of worker fees, though in at least one case victims were trafficked illegally with no documents after workers paid substantial fees.

-- MOLISA, has suspended approvals of new contracts for work in the United States in order to learn the facts surrounding the recent GHI case (ref A). MOLISA is also interviewing workers associated with apparently illegal attempts to send workers to the United States related to the GHI case.

-- MOLISA has increased regular and spot inspections of export labor firms. MOLISA carried out 46 periodic checks and three surprise investigations on labor

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supply companies in 2005. Seven firms were faced with fines in 2005; while no licenses were withdrawn or suspended. In 2006, MOLISA has thus far carried out three regular inspections and four surprise investigations. From these, it levied fines in four cases, and suspended license for three of the four firms because the severity of their violations. "There are more checks and more severe punishments than last year," said Tuan Nhu Nguyen, Deputy Head of the Labor Market Division in MOLISA's Department of Overseas Labor.

Comment

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120. (SBU) Vietnam is tackling head-on the central contradiction of export labor: how do you develop your labor export market without falling into the trap of competing in a "race to the bottom" with other labor export countries concerning worker protection? Vietnam officials are sincerely interested in creating a legal and regulatory framework that protects workers. We are encouraged that MOLISA officials have asked for post assistance in understanding U.S. immigration law, and we believe that strong progress is being made in raising the GVN's consciousness regarding the important human rights issues related to export labor. Once a sufficient legal framework is in place, the next challenge will be to convince Vietnam to put time and money into implementing that framework, especially when funds are so short.

121. (SBU) There are other ways we can help. The COMMIT process (ref B), despite high administrative and staff costs, generated a useful project proposal (Project Proposal Concept 10) entitled "Addressing Exploitative Brokering Practices" that could make a difference in this problem across the region, not just in Vietnam. Here, in Vietnam, we also hope to use the United States-Vietnam Labor Dialogue to educate Vietnam on export labor. We hope that the dialogue, which did not take place in 2005 because of a lack of funding for a U.S. Department of Labor delegation to visit Vietnam, could include a ministerial level visit to Washington.

MARINE